



SHERIFF APPEAL COURT

**[2017] SAC (Crim) 18
SAC/2017/000559/AP**

Sheriff Principal M M Stephen QC
Appeal Sheriff P J Braid

STATEMENT OF REASONS

delivered by SHERIFF PRINCIPAL M M STEPHEN QC

in

APPEAL AGAINST SENTENCE

by

GEORGE McKENZIE

Appellant:

against

PROCURATOR FISCAL, ABERDEEN

Respondent:

Appellant: C Findlater Advocate, George Mathers & Co Aberdeen

Respondent: M Hughes, Advocate Depute; Crown Agent

8 November 2017

[1] The appellant, George McKenzie (19) appeals the sentence imposed at the Justice of the Peace Court in Aberdeen on 23 August this year following his plea of guilty to a contravention of section 3 of the Road Traffic Act 1988 – careless driving.

[2] On 19 February 2017 the appellant caused a road traffic accident to occur by making a right turn across the path of an oncoming vehicle when it was unsafe to do so. A collision was almost inevitable. Looked at objectively this is an example of inconsiderate and bad driving. The consequences of the appellant's driving are not irrelevant standing the severity of the collision. As a result there was a collision not only with the oncoming vehicle but also with a cyclist and another vehicle who were approaching the junction from the minor road to the right into which the appellant was making his right turn. There was injury to the cyclist and damage to the vehicles. In our opinion the Justice of the Peace was fully justified in categorising the standard of driving displayed by the appellant at the upper end of careless driving. We take a similar view. We therefore find no fault whatsoever in the Justice's approach to the level of carelessness.

[3] We now turn to the penalties imposed namely a fine of £300 and eight penalty points. The fine was discounted to £250 and the Justice reduced the penalty points to seven. We consider that the headline sentences are in keeping with the gravity of the offence. Accordingly, the next question is this - was the level of the discount afforded in all the circumstances justified? The appellant complains that, firstly he was offered a fixed penalty of three penalty points and a fine of £100 which for some reason he omitted to ensure was accepted and paid timeously. When a complaint was subsequently served the appellant pled guilty by letter but he failed to ensure that the letter was received by the Procurator Fiscal in time for the pleading diet therefore necessitating that a non-appearance warrant be sought and granted. The Justice of the Peace reports that he considered there to be a utilitarian value in the timing of the plea given that neither civilian nor police witnesses were required to give evidence at trial. The Justice also noted that a warrant had been required.

[4] We consider that the Justice was correct to acknowledge the utilitarian value and the timing of the plea, but whether he accorded this sufficient weight is another matter. Clearly, this is a case where not only police witnesses but other motorists and the cyclist may have been required to give evidence. Accordingly, despite the appellant's poor organisation in respect of getting his letter to court in time there was an overall and clear utilitarian value in the plea. Given the circumstances of this case we consider that the headline number of penalty points can be justified. However the Justice of the Peace's reasoning in his report for restricting the discount of penalty points is not entirely clear having acknowledged the utilitarian value. We are satisfied that there is force in the argument that the level of discount which ought to have been afforded in reducing the penalty points was insufficient standing the clear utilitarian value in the plea before any trial or intermediate diet had even been fixed. We therefore propose to impose a different sentence in so far as the penalty points, which will be reduced from eight to six to reflect the early plea. We do not propose to interfere with the fine.

[5] It is appropriate that we make some further observations in this case. The Justice was under no obligation to sentence with the fixed penalty notice in mind and he is certainly not bound by it. It is simply a factor in this case. In the circumstances of this case we agree with the observation made by the Justice of the Peace that the offer of a fixed penalty was a matter of some surprise and indeed concern particularly when an accident had occurred due to careless driving by an inexperienced and young driver. Accordingly, the Justice of the Peace was correct to sentence having regard to the facts and circumstances of the offence before him and of course, any mitigating circumstances relating to the offender. Likewise, the court should regard the appellant's status as a young and newly qualified driver as

another factor to take into account. The recall provisions which apply if the six penalty point threshold is reached in the first two years are well known and will usually be adverted to in the plea in mitigation. They are designed to protect the public from incompetent driving by inexperienced drivers. However the court should not sentence with the specific licence recall provisions in mind in the sense of specifically avoiding or meeting the recall threshold but instead should impose the appropriate sentence having regard to all the relevant facts and circumstances. These will include any aggravating and mitigating features relating to the offence and the offender which will *de facto* involve the offender's newly qualified driver status and consequent lack of experience.